
Public Safety Committee

HB 1817

Brief Description: Concerning eligibility and requirements for deferred prosecutions.

Sponsors: Representative Goodman.

Brief Summary of Bill

- Authorizes a person who participates in a deferred prosecution for a first-time gross misdemeanor Driving Under the Influence (DUI) or Physical Control of a Vehicle Under the Influence (PC) charge to participate in a second deferred prosecution for a subsequent gross misdemeanor DUI or PC charge.
- Authorizes a person to petition for a second deferred prosecution while still under the court's jurisdiction for a first deferred prosecution, provided that the first deferred prosecution must be revoked before entry of the second.
- Requires a person petitioning for a deferred prosecution to demonstrate amenability to treatment by completing a minimum number of treatment sessions, unless waived by the court for good cause.
- Requires a person petitioning for a deferred prosecution for certain crimes to be evaluated by and have a plan developed and facilitated by the Department of Health.
- Modifies certain requirements for participation in a deferred prosecution depending on the nature of the underlying problem that caused the petitioner to commit the charged offense.

Hearing Date: 1/18/22

Staff: Corey Patton (786-7388).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Background:

Eligibility for Deferred Prosecution.

A person charged with a misdemeanor or gross misdemeanor in district or municipal court may petition the court for a deferred prosecution, subject to certain conditions. For example, a petitioner is not eligible for more than one deferred prosecution for gross misdemeanor Driving Under the Influence or Physical Control of a Vehicle Under the Influence charges.

To qualify for a deferred prosecution, the petitioner must allege that a substance use disorder, mental health problem, or domestic violence behavior problem caused the petitioner to commit the charged offense and that treatment is necessary to prevent reoccurrence. A petition must include a case history and risk assessment prepared by an approved treatment provider, health center, or government agency, depending on the nature of the underlying problem that caused the petitioner to commit the charged offense. For example, a petitioner seeking a deferred prosecution related to certain criminal mistreatment crimes must be evaluated by and have a plan developed and facilitated by the Department of Social and Health Services.

Evaluation and Treatment Plan.

The court may refer the petitioner for a diagnostic investigation and evaluation by a designated program or department to determine:

- whether the petitioner suffers from the problem described;
- whether the problem, if left untreated, has a probability of causing similar misconduct in the future;
- whether extensive and long-term treatment is required;
- whether effective treatment for the petitioner's problem is available; and
- whether the petitioner is amenable to treatment.

The entity conducting the evaluation must make a written report to the court stating its findings and recommendations. If the entity supports treatment, it must also recommend a treatment plan containing the type, nature, length, schedule, and cost of treatment. If the court approves the plan and the petitioner agrees to comply with its terms and conditions, the court must accept the petitioner's entry for a deferred prosecution.

Requirements for Deferred Prosecution.

A deferred prosecution based on alcoholism must be for a two-year period and impose the following requirements:

- total abstinence from alcohol and all other nonprescribed mind-altering drugs;
- participation in an intensive inpatient or intensive outpatient program in a state-approved substance use disorder treatment program;
- participation in a minimum of two meetings per week of an alcoholism self-help recovery support group for the duration of the treatment program;
- participation in an alcoholism self-help recovery support group from the date of court approval of the plan to entry into intensive treatment;
- no less than weekly approved outpatient counseling, group or individual, for a minimum of

- six months following the intensive phase of treatment;
- no less than monthly outpatient contact, group or individual, for the remainder of the two-year deferred prosecution period;
- reservation of the decision to include the use of prescribed drugs, including disulfiram, as a condition of treatment to the treating facility and the participant's physician.
- all treatment within or approved by a state-approved substance use disorder treatment program; and
- signing and agreeing to the terms and conditions of the program.

As a condition of granting a deferred prosecution, the court may appoint a probation department or other appropriate person or agency to supervise the petitioner. The supervisor must:

- at least once every six months, request an abstract of the petitioner's driving record if the petitioner's charge relates to operation of a motor vehicle; and
- at least once every month, contact the petitioner or any agency to which the petitioner has been directed for treatment.

The facility or service provider administering treatment or services to the participant must provide the court with a statement every three months for the first year, and every six months for the second year, regarding the participant's cooperation with the treatment plan and progress or failure with treatment. If the participant successfully completes the two-year treatment program and at least five years have passed following entry of the order for the deferred prosecution, the court must dismiss the pending charges. If the participant violates any terms or conditions of the deferred prosecution, the court must determine whether to revoke the deferred prosecution and enter judgment on the charge.

Summary of Bill:

Eligibility for Deferred Prosecution.

A person who participates in a deferred prosecution for a first-time gross misdemeanor Driving Under the Influence (DUI) or Physical Control of a Vehicle Under the Influence (PC) charge may petition the court for a second deferred prosecution for a subsequent gross misdemeanor DUI or PC charge, provided that the person otherwise meets eligibility requirements, the court makes any necessary findings, and the person has no prior out-of-state convictions that would constitute a prior offense. A person who does not participate in a deferred prosecution for a first-time gross misdemeanor DUI or PC charge is only eligible to petition the court for one deferred prosecution for a subsequent gross misdemeanor DUI or PC charge.

A person may petition the court for a second deferred prosecution while still under the jurisdiction of the court for a first deferred prosecution; however, the court must revoke the first deferred prosecution prior to entry of the second deferred prosecution. A person may not participate in two deferred prosecutions at the same time unless the separate offenses were committed within seven days of each other and the person petitions to consolidate the offenses into a single deferred prosecution.

A petition for deferred prosecution must include a case history and risk assessment prepared by a behavioral health agency, approved for mental health services and substance use disorder services, or by a Washington state-certified domestic violence treatment provider, depending on the nature of the underlying problem that caused the petitioner to commit the charged offense. A petitioner seeking a deferred prosecution related to certain criminal mistreatment crimes must be evaluated by and have a plan developed and facilitated by the Department of Health.

Evaluation and Treatment Plan.

A program or department performing a diagnostic investigation and evaluation for a petitioner must, depending on the nature of the underlying problem that caused the petitioner to commit the offense, determine whether the petitioner is either:

- amenable to treatment as demonstrated by (i) completion of residential treatment, (ii) completion of a minimum of 18 hours of intensive outpatient treatment for substance use disorder petitions, (iii) completion of a minimum of six mental health sessions for mental health disorder petitions, or (iv) completion of a minimum of six domestic violence treatment sessions for domestic violence petitions; or
- willing to cooperate with child welfare services.

The court may waive the required minimum number of sessions if it finds good cause.

Requirements for Deferred Prosecution.

A deferred prosecution based on either substance use disorder or mental health disorder must be for a two-year period and impose the following requirements:

- total abstinence from alcohol and all other nonprescribed mind-altering drugs;
- periodic, random urinalysis or breath analysis;
- all treatment within or approved by a Washington state-approved substance use disorder treatment program; and
- signing and agreeing to the terms and conditions of the program.

If the participant fails to remain abstinent, the participant must receive a full substance use disorder reassessment and recommended treatment.

A deferred prosecution based on substance use disorder must also impose the following requirements:

- completion of an intensive outpatient treatment program or residential inpatient treatment program, depending on the severity of the diagnosis;
- participation in a minimum of two meetings per week of a substance use disorder self-help recovery support group, as determined by the assessing agency, for the duration of the treatment program;
- no less than weekly approved outpatient counseling, whether group or individual, for a minimum of six months following the intensive phase of treatment;
- no less than monthly outpatient contact, whether group or individual, for the remainder of the two-year deferred prosecution period; and

- reservation of the decision to include the use of prescribed drugs, including disulfiram, as a condition of treatment to the treating facility and the participant's physician.

A deferred prosecution based on mental health disorder must also impose the following requirements:

- if there is a mild substance use disorder in addition to a mental health disorder diagnosis, completion of outpatient programming; and
- completion of individual or group mental health services.

As a condition of granting a deferred prosecution, the court may appoint a probation department or other appropriate person or agency to supervise the petitioner. The supervisor must:

- at least once every six months, request an abstract of the petitioner's driving record if the petitioner's charge relates to operation of a motor vehicle;
- at least once every month until treatment is completed, contact the petitioner;
- at least once every 90 days until the end of the deferral period, review the petitioner's criminal history; and
- report known violations of supervision or law and noncompliance with conditions of the deferred prosecution to the court within five business days or as soon as practicable.

The facility or service provider administering treatment or services to the participant must provide the court with a statement every month regarding the participant's cooperation with the treatment plan and progress or failure with treatment. If the participant successfully completes the approved treatment plan and at least five years have passed following entry of the order for the deferred prosecution, the court must dismiss the pending charges.

Appropriation: None.

Fiscal Note: Requested on January 17, 2022.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.